

April 01, 2010

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA1  
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Signed and Filed: March 30, 2010  
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THOMAS E. CARLSON  
U.S. Bankruptcy Judge

## UNITED STATES BANKRUPTCY COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 In re ) Case No. 09-31932 TEC  
11 ARDEN VAN UPP, ) Chapter 11  
12 )  
13 Debtor. )  
----- )**MEMORANDUM RE FEE APPLICATION OF MITCHELL HADLER**14  
15 The court held a hearing on March 29, 2010 regarding the  
16 skeletal fee application filed on March 15, 2010 by Debtor's former  
17 counsel, Mitchell R. Hadler. Iain A. Macdonald appeared for  
18 Debtor. Mr. Hadler did not appear.19 Upon due consideration, and for the reasons stated below, the  
20 court hereby denies the fee application, but does not determine at  
21 this time whether any retainer already paid to Mr. Hadler should be  
22 refunded. This memorandum shall constitute the court's findings of  
23 fact and conclusions of law.24 **FACTS**25 On July 10, 2009, Debtor filed the above-captioned chapter 11  
26 bankruptcy case. On August 1, 2009, Debtor filed an application to  
27 employ Mr. Hadler as counsel for Debtor (the Application to  
28 Employ). On October 2, 2009, the court signed an order granting  
the Application to Employ.

1       On March 1, 2010, the court signed an order setting: an  
2 administrative claims bar date of March 15, 2010 (the Bar Date  
3 Order); a deadline for Debtor to file objections to the  
4 administrative claims of March 22, 2010; and a hearing on the fee  
5 applications of March 29, 2010 at 9:30 a.m. Mr. Hadler was served  
6 with a copy of the Bar Date Order on March 1, 2010.

7       On March 15, 2010, Mr. Hadler filed a fee application (the Fee  
8 Application), seeking \$35,000 in fees and expenses for services  
9 provided to Debtor from the petition date through September 22,  
10 2009. The filed Fee Application is not supported by any additional  
11 documents such as time records, but states that supporting  
12 documents will be filed.

13       On March 22, 2010, Debtor filed an objection to the Fee  
14 Application, arguing that the Fee Application should be denied in  
15 its entirety because Debtor lacks sufficient time to properly  
16 review the Fee Application and to frame objections thereto.

17       On March 29, 2010, Mr. Hadler filed a request for an  
18 unspecified amount of additional time to supplement the Fee  
19 Application. Mr. Hadler neither appeared at the hearing held on  
20 the Fee Application, nor contacted the court to explain why he was  
21 unavailable to appear.

22 **DISCUSSION**

23       The court may award reasonable compensation for actual,  
24 necessary services rendered by an attorney employed as counsel for  
25 Debtor. 11 U.S.C. § 330(a)(1)(A). In determining the amount of  
26 reasonable compensation to be awarded to counsel for a debtor, the  
27 court must consider the nature, extent, and value of such services,  
28 taking into account all relevant factors, including the time spent  
on such services and the rate charged. 11 U.S.C. § 330(a)(3).

1 The court is unable to determine reasonable compensation to be  
2 awarded to Mr. Hadler, because the Fee Application lacks any detail  
3 or supporting documentation. In the four weeks since receiving  
4 notice of the Bar Date, Mr. Hadler has neither filed supporting  
5 documentation, nor stated a reason why he needs additional time to  
6 do so. In addition, Mr. Hadler failed to appear at the hearing on  
7 the Fee Application, and failed to provide any explanation why he  
8 was unavailable to appear.

9 Because Mr. Hadler has not provided the court with any  
10 documentation in support of his Fee Application, because Mr. Hadler  
11 has not been diligent in prosecuting his Fee Application, and  
12 because it is clear that Mr. Hadler did some post-petition work for  
13 Debtor, the court determines that Mr. Hadler should not be allowed  
14 any fees, but does not determine at this time whether any  
15 prepetition retainer paid to him should be refunded.

\*\*END OF MEMORANDUM\*\*